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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SABER AHMED and JOHN
MONTELEONE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HSBC BANK USA, NATIONAL
ASSOCIATION, and PHH
MORTGAGE CORPORATION,

Defendants.

) Case No. 5:16-cv-02057-JGB-DTB

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT**
) **FOR:**

1. **VIOLATIONS OF THE
TELEPHONE
CONSUMER
PROTECTION ACT [47
U.S.C. §227 ET SEQ.]**

2. **WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER
PROTECTION ACT [47
U.S.C. §227 ET SEQ.]**

) **DEMAND FOR JURY TRIAL**
)

Plaintiffs Saber Ahmed and John Monteleone (“Plaintiffs”), individually

1 and on behalf of all others similarly situated, allege the following upon
 2 information and belief based upon personal knowledge:

3 **NATURE OF THE CASE**

4 1. Plaintiffs bring this action individually and on behalf of all others
 5 similarly situated, seeking damages and any other available legal or equitable
 6 remedies resulting from the illegal actions of HSBC Bank USA, National
 7 Association and PHH Mortgage Corporation (“Defendants”) in contacting
 8 Plaintiffs on their cellular telephones in violation of the Telephone Consumer
 9 Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”). These calls are harassing,
 10 constitute a nuisance, a trespass to chattels, and are an invasion of privacy.

11 **JURISDICTION & VENUE**

12 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff
 13 Saber Ahmed, a resident of California, seeks relief on behalf of a Class, which
 14 will result in at least one class member belonging to a different state than that of
 15 Defendants, companies with their principal place of business and State of
 16 Incorporation in New York State and New Jersey respectively. Plaintiffs also seek
 17 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when
 18 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
 19 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
 20 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
 21 present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Central
 23 District of California pursuant to *18 U.S.C. 1391(b)* because Defendants do
 24 business within the State of California, within the County of Riverside and
 25 therefore in the Central District of California.

26 **PARTIES**

27 4. Plaintiff Saber Ahmed (“Plaintiff Ahmed”) is a natural person
 28 residing in Winchester, California, and is a “person” as defined by *47 U.S.C. §*

1 153(39).

2 5. Plaintiff John Monteleone (“Plaintiff Monteleone”) is a natural
3 person residing in Passaic County, New Jersey, and is a “person” as defined by 47
4 *U.S.C. § 153(39)*.

5 6. Defendant HSBC Bank USA, National Association (“Defendant
6 HSBC”) is a company in the business of lending money to consumers and
7 collecting thereon; and is a “person” as defined by 47 *U.S.C. § 153(39)*.

8 7. Defendant PHH Mortgage Corporation (“Defendant PHH Mortgage”) is a company in the business of lending money to consumers, servicing mortgages,
9 and collecting thereon and is a “person” as defined by 47 *U.S.C. § 153(39)*.

11 **FACTUAL ALLEGATIONS**

12 **A. Factual Allegations Regarding Defendants**

13 8. Defendant HSBC is, in part, in the business of offering and servicing
14 a wide range of mortgage products and financial services to mortgage holders.

15 9. Defendant PHH Mortgage offers outsourcing services to wealth
16 management firms, regional banks and community banks, including Defendant
17 HSBC.

18 10. Defendant HSBC retains Defendant PHH Mortgage to service
19 certain mortgages that Defendant HSBC holds or owns, including placing
20 automated calls using an ATDS or artificial or prerecorded voice to mortgagors
21 who have fallen behind on their mortgages.

22 11. Defendant HSBC knows that Defendant PHH Mortgage places
23 collection calls using an ATDS or artificial or prerecorded voice. Defendant
24 HSBC directs the manner and means by which PHH Mortgage places the calls.

25 12. During the collection calls that Defendant PHH Mortgage initiates
26 using an ATDS or artificial or prerecorded voice, the callers admit that the calls
27 are “robocalls.”

28 13. During the collection calls that Defendant PHH Mortgage initiates,

1 the operator identifies him or herself as affiliated with the HSBC collections
2 department.

3 14. Defendant HSBC ratifies Defendant PHH Mortgage's actions by
4 accepting the benefits of Defendant PHH Mortgage's calls through continuing to
5 use PHH to service these loans despite knowledge that it is using this equipment
6 and messages, and accepting payments on the mortgages generated by Defendant
7 PHH Mortgage's telephone solicitation activities.

8 15. Defendants make calls using an ATDS or artificial or prerecorded
9 voice to cellular telephones whose owners have not provided prior express written
10 consent to receive such calls. Plaintiffs received such calls without providing any
11 type of prior consent.

12 16. Defendants also fail to cease such improper calls even after they
13 have been told not to call the customer using an ATDS and/or artificial or
14 prerecorded voice.

15 **B. Defendant HSBC Is Liable for Calls Placed on Its Behalf**

16 17. Creditors are strictly liable for TCPA violations of the debt
17 collection agencies that make illegal calls on their behalf. Because HSBC, a
18 creditor, hired PHH to service these loans, including make calls, HSBC is liable
19 for these calls.

20 18. Alternatively, Defendant HSBC is vicariously liable for the conduct
21 of Defendant PHH Mortgage under ordinary principles of agency because
22 Defendant HSBC directed or authorized PHH Mortgage's conduct constituting
23 the statutory violations alleged herein.

24 18. Defendant HSBC established, approved, or ratified Defendant PHH
25 Mortgage's policies and practices.

26 19. Defendant HSBC accepted the benefits of Defendant PHH Mortgage
27 and other vendors' illegal calls by accepting payments from debtors generated by
28 the illegal calls, in spite of knowledge that the payments were generated through

1 the making of illegal calls such as those being challenged here.

2 20. Defendant HSBC cloaked Defendant PHH Mortgage with
3 apparent/implied authority to act on its behalf, including but not limited to
4 authorizing PHH Mortgage to make debt collection calls on its behalf and to use
5 its name in its collection efforts. Alternatively, PHH made these calls, and HSBC
6 operators/agents serviced them, in which case HSBC would have participated in
7 the illegal calls.

8 21. Defendant HSBC had the authority and responsibility to prevent or
9 correct the unlawful calling practices of Defendant PHH Mortgage and
10 formulated, directed, controlled, and participated in the acts and practices of PHH
11 Mortgage that violated the TCPA, including the acts and practices set forth in this
12 Complaint.

13 22. Under ordinary principles of vicarious liability, Defendant HSBC is
14 liable for the TCPA violations alleged above because it is directly involved in,
15 authorized, or ratified the PHH Mortgage operations that violated the TCPA

16 **C. Factual Allegations Regarding Plaintiff Ahmed**

17 23. Beginning in and around February of 2015, Defendants and/or their
18 agents contacted Plaintiff Ahmed on his cellular telephone number ending in -
19 0234, in an attempt to collect an alleged outstanding debt.

20 24. Defendants and/or their agents contacted or attempted to contact
21 Plaintiff Ahmed from a myriad of different telephone numbers. As an illustrative
22 example (and not one of limitation), Defendants and/or its agents contacted or
23 attempted to contact Plaintiff Ahmed from the following telephone numbers:
24 (856) 917-0001; (877) 387-9031; (714) 418-4291; (714) 418-4144; and (856)
25 917-0050.

26 25. To further illustrate Defendants' illegal actions (and, again, not one
27 of limitation), Defendants contacted or attempted to contact Plaintiff Ahmed on
28 or around: February 10, 2015 at 11:33 a.m. and 11:46 a.m.; February 12, 2015 at

1 2:55 p.m.; February 13, 2015 at 11:40 a.m. and 6:39 p.m.; February 16, 2015 at
 2 9:52 a.m.; April 8, 2015 at 9:48 a.m.; April 10, 2015 at 10:08 a.m.; May 21, 2015
 3 at 10:48 a.m.; June 12, 2015 at 3:27 p.m.; June 17, 2015 at 9:43 a.m.; June 18,
 4 2015 at 9:43 a.m. and 2:31 p.m.; August 5, 2015 at 10:18 a.m.; August 14, 2014
 5 at 9:41 a.m.; August 21, 2015 at 1:34 p.m. and 2:29 p.m.; August 22, 2015 at
 6 9:30 a.m. and 2:44 p.m.; August 24, 2015 at 8:44 a.m. and 1:35 p.m.; August 25,
 7 2015 at 9:25 a.m., 11:19 a.m., and 1:14 p.m.; September 3, 2015 at 9:25 a.m.;
 8 September 16, 2015 at 8:33 a.m., 1:56 p.m., and 4:06 p.m.; October 3, 2015 at
 9 11:54 a.m.; October 5, 2015 at 2:43 p.m. and 4:12 p.m.; and October 6, 2015 at
 10 9:04 a.m.

11 26. Furthermore, during all relevant times, to place the aforementioned
 12 calls (and, indeed, other calls not enumerated herein), Defendants and/or their
 13 agents used an ATDS, as defined by *47 U.S.C. § 227(a)(1)*, to place its daily calls
 14 to Plaintiff Ahmed seeking to collect the debt allegedly owed.

15 27. Defendants' calls constituted calls that were not for emergency
 16 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

17 28. Defendants' calls were placed to a telephone number assigned to a
 18 cellular telephone service for which Plaintiff Ahmed incurs a charge for incoming
 19 calls pursuant to *47 U.S.C. § 227(b)(1)*.

20 29. During all relevant times, Defendants did not possess Plaintiff
 21 Ahmed's "prior express consent" to receive calls using an automatic telephone
 22 dialing system or an artificial or prerecorded voice on his cellular telephone
 23 pursuant to *47 U.S.C. § 227(b)(1)(A)*.

24 30. Defendants' calls to Plaintiff Ahmed are annoying, harassing,
 25 constitute a nuisance, and are an invasion of privacy.

26 31. Defendants are responsible for making the above-described ATDS-
 27 generated and/or prerecorded calls.

28 32. Defendants have made a significant number of ATDS generated

1 and/or automated or prerecorded calls to persons on their cellular telephones in
2 California, New Jersey, and throughout the entire United States.

3 33. Defendants intend to continue to make similar ATDS-generated
4 and/or automated or prerecorded calls to persons on their cellular telephones in
5 California, New Jersey, and throughout the entire United States.

6 **D. Factual Allegations Regarding Plaintiff Monteleone**

7 34. In or around August 2015, Plaintiff Monteleone began receiving
8 ATDS-generated or automated or prerecorded calls (“robocalls”) on his cellular
9 telephone from, or on behalf of, Defendants.

10 35. In fact, Plaintiff Monteleone received numerous calls to his cellular
11 telephone from Defendants, including, but not limited to, on the following dates:
12 August 20, 2015 at 1:39 p.m.; August 26, 2015 at 12:14 p.m.; August 27, 2015 at
13 12:28 p.m.; August 28, 2015 at 2:57 p.m.; September 3, 2015 at 3:27 p.m.;
14 September 18, 2015 at 12:18 p.m.; September 21, 2015 at 11:05 a.m. and 1:27
15 p.m.; September 23, 2015 at 10:09 a.m.; September 28, 2015 at 2:16 p.m.;
16 October 15, 2015 at 3:18 p.m.; October 22, 2015 at 11:28 a.m.; October 23, 2015
17 at 10:32 a.m.; October 26, 2015 at 10:04 a.m.; October 27, 2015 at 9:41 a.m.;
18 October 28, 2016 at 11:16 a.m.; October 30, 2015 at 10:11 a.m. and 1:14 p.m.;
19 November 2, 2015 at 10:03 a.m. and 4:29 p.m.; November 3, 2015 at 9:54 a.m.
20 and 1:11 p.m.; November 4, 2015 at 10:00 a.m.; November 5, 2015 at 11:02 a.m.;
21 November 6, 2015 at 12:02 p.m.; November 7, 2015 at 10:43 a.m.; November 9,
22 2015 at 10:30 a.m. and 5:34 p.m.; November 10, 2015 at 12:41 p.m.; November
23 11, 2015; November 12, 2015 at 2:39 p.m. and 5:28 p.m.; November 20, 2015 at
24 4:14 p.m.; November 30, 2015 at 3:54 p.m.; December 1, 2015 at 3:44 p.m.;
25 December 2, 2015 at 9:42 a.m.; December 4, 2015 at 12:22 p.m.; December 5,
26 2015 at 12:41 p.m.; December 7, 2015 at 10:58 a.m., 2:58 a.m., and 6:59 p.m.;
27 December 8, 2015 at 12:20 p.m.; December 10, 2015 at 1:47 p.m.; December 11,
28 2015 at 4:18 p.m.; and December 30, 2015 at 5:00 p.m.

1 36. When Plaintiff Monteleone answered some of the calls, he
 2 immediately heard a prerecorded voice saying “please continue to hold.” Music
 3 would then play for a few seconds until the prerecorded voice again instructed
 4 Plaintiff Monteleone to “please continue to hold.”

5 37. On multiple occasions, Plaintiff Monteleone continued to hold to
 6 speak with a live operator.

7 38. During these interactions with the live operator, Plaintiff Monteleone
 8 obtained verbal confirmation from Defendant HSBC that the calls were robocalls.

9 39. For example, after answering one of Defendants’ calls, Plaintiff
 10 Monteleone had the following exchange with an HSBC Mortgage Service Center
 11 representative who identified himself as “Ali”:

12 Monteleone: Is this an automatic dialer call you’re
 13 doing?

14 HSBC: Yes, sir.

15 Monteleone: It is? So this is like a robocall, correct?

16 HSBC: Yes, sir.

17 40. During many of these interactions with live operators, Plaintiff
 18 Monteleone also requested that the calls to his cellular telephone cease.

19 41. For example, during the call with Ali described above, Plaintiff
 20 Monteleone and Ali had an exchange substantively as follows:

21 Monteleone: . . . Anyway you guys could stop
 22 bothering me on this?

23 HSBC: Well, that’s the thing about it, sir, is that
 24 the collection calls will continue. I have
 no control over that.

25 Monteleone: So you can’t stop this, you’re saying?

26 HSBC: Nope. I have no control over that.

27 Monteleone: You don’t? Who does?

28 HSBC: I think customer service. I think you have

1 to contact them.

2 Monteleone: I thought you were customer service.

3 HSBC: We're the collections department.

4 Monteleone: Oh, oh. Well, can you stop these calls
from coming?

5 HSBC: It's the automated dialer, so every month,
6 you know, when we see the amount due,
7 it automatically dials.

8 Monteleone: Every day it dials?

9 HSBC: Every, every time we see an amount due,
it dials until the payment is made.

10 Monteleone: So, that's every day.

11 HSBC: It can be every day.

12 Monteleone: *Can* be every day? It *is* every day.
13 Sometimes it's two or three times a day.

14 HSBC: We get in contact with you, when we talk
15 to you, we're not going to call you again
16 the same day but we, since we talked on
the phone today you know.

17 Monteleone: Oh, so you won't bother me for the rest of
18 the day, so I'm good to go, right?

19 HSBC: Me, myself, I wouldn't call you back.

20 Monteleone: Okay. Alright, you have yourself a great
21 day. Thank you very much. If you can't
22 stop this, I don't know what else we could
23 talk about. There is an active short sale
going on. This is harassment, and I wish
you guys would stop it.

24 HSBC: I'll put that in the notes for you, sir.

25 42. On November 11, 2015, Plaintiff Monteleone had a similar exchange
26 with another HSBC representative who identified herself as Brielle:

27 Monteleone: . . . 30 minutes before you called, I was in
28 the dentist, so I really couldn't take your

1 call, or the other one. But 30 minutes
2 before you called, I get a robocall I guess
3 from HSBC looking for payment

4 HSBC: Oh, the collections department?

5 Monteleone: That's right the collections department.
6 And I'm getting 2-3 calls a day from the
7 collections department

8 HSBC: Those calls only typically happen only
9 because the account isn't being shown
10 current. The only thing I can do at this
11 point to stop those collection calls is I can
12 put you in the system as taking you out for
13 7 days, and then after that I will just have
14 to do it again, but I can't completely take
15 you out.

16 Monteleone: So you can't stop these robocalls?

17 HSBC: Not completely. Only up to 7 days. Only
18 way it can be stopped is if the account is
19 brought current.

20 Monteleone: Okay, now, today is November 11th, so
21 you're gonna put me in to stop the
22 robocalls?

23 HSBC: Uh huh. Did you get a call today already?

24 Monteleone: I did, 20 minutes before you called.

25 HSBC: Okay, so I'll put you in the system and I'm
26 just making sure you did already receive a
27 call today because it does take 24 hours
28 for it to generate through the system, so I
just wanted to make sure.

Monteleone: Can you see in the system that I received
the robocall? About 45 minutes ago.

HSBC: Let's see... Let's see... Today's date...?

Monteleone: November 11th.

HSBC: Yep, I see one right here. I see you didn't
answer, correct?

1 Monteleone: That's correct. I was in the dentist chair.

2 HSBC: Yep, I see it here. So, I can take you out
for 7 days.

3 Monteleone: What time was that call made?

4 HSBC: Let's see if I can even see a time. Let's see
5 – I can't even see a time. I would say
6 around 12:00.

7 Monteleone: That's about right. That's when I was in
the dentist chair.

8 HSBC: Yep. Yeah, I can take you out for you
9 today.

10 Monteleone: Why do they call me 2 or 3 times a day?
11 What are they –

12 HSBC: Sometimes it can be – I know in
13 collections they're either working off the
14 sheets or they will call you through their
15 dialing system on that end, so it may come
16 through their dialing system and then
17 someone may have you on their manual
sheet. So, that could be the reason why
you may receive 2 calls a day.

18 Monteleone: Do you think that's excessive?

19 HSBC: Could get quite annoying. That's why I'm
gonna take you out today.

20 Monteleone: Beyond quite annoying. It's harassment;
21 it's truly harassment. . . .

22 43. In addition to the two exchanges detailed in paragraphs 41 and 42,
23 above, Defendants and/or their agents have provided a number of additional
24 responses to Plaintiff Monteleone's requests that calls to his cellular telephone
25 cease, including: (a) that he will be taken off the call list and the robocalls will
26 stop; (b) that they can stop the robocalls for two weeks but then they will
27 automatically start back up again; and (c) that there is nothing they can do to stop
28 the robocalls.

1 44. Defendants and/or their agents have also advised Plaintiff
 2 Monteleone on multiple occasions that, in order for the robocalls to stop, Plaintiff
 3 Monteleone would have to send in a written “cease and desist” letter to
 4 Defendants.

5 45. Plaintiff Monteleone did not provide his prior express consent to
 6 receive ATDS-generated and/or artificial or prerecorded voice telephone calls on
 7 his cellular telephone from, or on behalf of, Defendants.

8 46. Furthermore, Plaintiff Monteleone specifically told Defendants that
 9 they did not have permission to call him on his cellular telephone using an ATDS
 10 and/or artificial or prerecorded voice on more than one occasion, including on
 11 November 11, 2015, when speaking with HSBC representative Angelic Medina:

12 HSBC: Alright, and let me just verify are we
 13 allowed to call you on your cell phone,
 14 (973) 865-[XXXX], using the automated
 15 dialer?

16 Monteleone: Using the automated dialer? I’ve asked to
 17 have that stopped. This is robocalling
 18 You’re the third time I’ve been called
 19 today. I was assured yesterday that the
 20 calls were gonna stop. Why are you
 21 calling me?

22 HSBC: Let me just check; please give me a
 23 minute. While I’m still checking on it,
 24 would you like to add your email?

25 Monteleone: No. I don’t want you bothering my email,
 26 too. You’re calling me 3 times a day as it
 27 is.

28 47. Even if Defendants believe they had obtained express consent to
 contact Plaintiff Monteleone on his cellular telephone using an ATDS and/or
 automated or prerecorded voice, Plaintiff Monteleone revoked that consent on
 several occasions.

1 48. Defendants' calls to Plaintiff Monteleone are annoying, harassing,
2 constitute a nuisance, and are an invasion of privacy.

3 49. Defendants are responsible for making the above-described ATDS-
4 generated and/or artificial or prerecorded voice calls.

5 50. Defendants have made a significant number of ATDS-generated
6 and/or artificial or prerecorded calls to persons on their cellular telephones in
7 California, New Jersey, and throughout the entire United States.

8 51. Defendants intend to continue to make similar ATDS-generated
9 and/or artificial or prerecorded voice calls to persons on their cellular telephones
10 in California, New Jersey, and throughout the entire United States.

11 52. Plaintiffs and all members of the Class, defined below, have been
12 harmed by the acts of Defendants because their privacy has been violated, they
13 were subjected to annoying and harassing calls that constitute a nuisance, and
14 they were charged for incoming calls. The calls also occupied Plaintiffs' and all
15 members of the Class' cellular telephone lines from legitimate communication.
16 Furthermore, every call used some of the recipient's time and mental energy, both
17 of which are precious.

18 **CLASS ALLEGATIONS**

19 53. Plaintiffs bring this action individually and on behalf of all others
20 similarly situated, as members of the proposed class (hereafter the "Class")
21 defined as follows:

22 All persons within the United States to whom (a)
23 Defendant HSBC or a third party acting on Defendant
24 HSBC's behalf (b) in an effort to collect payment on
25 mortgages owned by Defendant HSBC, (c) placed calls
26 (d) to their cellular telephone (e) through the use of any
27 automatic telephone dialing system or an artificial or
28 prerecorded voice (f) within the four years prior to the
filing of this Complaint.

1 54. Plaintiffs also bring this action on behalf of the following Subclass
2 defined as follows:

3 All persons within the United States to whom: (a)
4 Defendant PHH Mortgage, (b) in an effort to collect
5 payment on mortgages owned by Defendant HSBC, (c)
6 placed calls (d) to their cellular telephone numbers (e)
7 through the use of any automatic telephone dialing
8 system or an artificial or prerecorded voice (f) within the
9 four years prior to the filing of this Complaint.

10 Plaintiffs represent, and are members of, the Class and Subclass. Defendants, any
11 entity in which Defendants have a controlling interest or that has a controlling
12 interest in Defendants, and Defendants' employees and agents are excluded from
13 the Class and Subclass. Also excluded are the judge to whom this case is
14 assigned and any member of the judge's immediate family.

15 55. Plaintiffs do not know the number of members in the Class and
16 Subclass, but believe the Class and Subclass members number in the thousands, if
17 not more. Thus, this matter should be certified as a Class Action to assist in the
18 expeditious litigation of the matter.

19 56. The Class and Subclass are so numerous that the individual joinder
20 of all of its members is impractical. While the exact number and identities of the
21 Class and Subclass members are unknown to Plaintiffs at this time and can only
22 be ascertained through appropriate discovery, Plaintiffs are informed and believe
23 and thereon allege that the Class and Subclass include thousands of members.
24 Plaintiffs allege that the Class and Subclass members may be ascertained by the
25 records maintained by Defendants.

26 57. Plaintiffs and members of the Class and Subclass were harmed by
27 the acts of Defendants in at least the following ways: Defendants illegally
28 contacted Plaintiffs and Class and Subclass members via their cellular telephones,
thereby causing Plaintiffs and Class and Subclass members to incur certain
charges or reduced telephone time for which Plaintiffs and Class and Subclass

1 members had previously paid by having to retrieve or administer messages left by
2 Defendants during those illegal calls, and invading the privacy of said Plaintiffs
3 and Class and Subclass members. Additionally, these illegal calls tied up the cell
4 phones of Plaintiffs and the class, which had the purpose and effect of preventing
5 them from using their phones for legitimate purposes.

6 58. Common questions of fact and law exist as to all members of the
7 Class and Subclass which predominate over any questions affecting only
8 individual members of the Class and Subclass. These common legal and factual
9 questions, which do not vary between Class and Subclass members, and which
10 may be determined without reference to the individual circumstances of any Class
11 and Subclass members, include, but are not limited to, the following:

12 a. As to Plaintiffs and the Class and Subclass, whether
13 Defendants and/or their affiliates, agents, and/or other persons or entities acting
14 on Defendants' behalf violated 47 U.S.C. § 227(b)(1)(A) by making any call,
15 except for emergency purposes, to a cellular telephone number using an ATDS or
16 artificial or prerecorded voice;

17 b. As to Plaintiffs and the Class and Subclass, whether
18 Defendants and/or their affiliates, agents, and/or other persons or entities acting
19 on Defendants' behalf knowingly and/or willfully violated 47 U.S.C. §
20 227(b)(1)(A) by making any call, except for emergency purposes, to a cellular
21 telephone number using an ATDS or artificial or prerecorded voice, thus entitling
22 Plaintiffs and the Class and Subclass to treble damages;

23 c. Whether Defendants are liable for ATDS generated and/or
24 artificial or prerecorded voice calls attempting to collect debt owed to Defendants
25 made by Defendant's affiliates, agents, and/or other persons or entities acting on
26 Defendants' behalf; and

27 d. Whether Defendants and/or their affiliates, agents, and/or
28 other persons or entities acting on Defendants' behalf should be enjoined from

1 violating the TCPA in the future.

2 59. As persons who received numerous collection calls from Defendants
3 using an automatic telephone dialing system or an artificial or prerecorded voice,
4 without their prior express consent, Plaintiffs are asserting claims that are typical
5 of the Class and Subclass.

6 60. Plaintiffs will fairly and adequately protect the interests of the
7 members of the Class and Subclass. Plaintiffs have retained attorneys experienced
8 in the prosecution of class actions, including consumer class actions and TCPA
9 class actions. Plaintiffs and their counsel are committed to prosecuting this action
10 vigorously on behalf of the Class and Subclass, and have the financial resources
11 to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or
12 that conflict with those of the proposed Class and Subclass.

13 61. A class action is superior to other available methods of fair and
14 efficient adjudication of this controversy, since individual litigation of the claims
15 of all Class and Subclass members is impracticable. Even if every Class and
16 Subclass member could afford individual litigation, the court system could not. It
17 would be unduly burdensome to the courts in which individual litigation of
18 numerous issues would proceed. Individualized litigation would also present the
19 potential for varying, inconsistent, or contradictory judgments and would magnify
20 the delay and expense to all parties and to the court system resulting from
21 multiple trials of the same complex factual issues. By contrast, the conduct of this
22 action as a class action presents fewer management difficulties, conserves the
23 resources of the parties and of the court system, and protects the rights of each
24 Class and Subclass member.

25 62. Defendants have engaged in a common course of conduct toward
26 Plaintiffs and Class and Subclass members. The common issues arising from this
27 conduct that affect Plaintiffs and Class and Subclass members predominate over
28 any individual issues. Adjudication of these common issues in a single action has

1 important and desirable advantages of judicial economy.

2 63. The prosecution of separate actions by individual Class and Subclass
3 members would create a risk of adjudications with respect to them that would, as
4 a practical matter, be dispositive of the interests of the other Class and Subclass
5 members not parties to such adjudications or that would substantially impair or
6 impede the ability of such non-party Class and Subclass members to protect their
7 interests.

8 64. Defendants have acted or refused to act in respects generally
9 applicable to the Class and Subclass, thereby making final injunctive relief and
10 corresponding declaratory relief with respect to the Class and Subclass
11 appropriate on a class-wide bases. Moreover, on information and belief, Plaintiffs
12 allege that the automated calls made by Defendants and/or their affiliates, agents,
13 and/or other persons or entities acting on Defendants' behalf that are complained
14 of herein are substantially likely to continue in the future if an injunction is not
15 entered.

16 **FIRST CAUSE OF ACTION**

17 **Violations of the Telephone Consumer Protection Act**

18 **47 U.S.C. § 227(b)(1)(A)**

19 65. Plaintiffs repeat and incorporate by reference into this cause of action
20 the allegations set forth in the preceding paragraphs.

21 66. The foregoing acts and omissions of Defendants and/or their
22 affiliates, agents, and/or other persons or entities acting on Defendants' behalf
23 constitute numerous and multiple violations of the TCPA, 47 U.S.C. §
24 227(b)(1)(A), by making calls, except for emergency purposes, to the cellular
25 telephone numbers of Plaintiffs and Class and Subclass members using an ATDS
26 and/or artificial or prerecorded voice.

27 67. As a result of Defendants' and/or their affiliates, agents, and/or
28 other persons or entities acting on Defendants' behalf's violations of 47 U.S.C. §

227(b)(1)(A), Plaintiffs and Class and Subclass members presumptively are entitled to an award of \$500.00 in statutory damages for each and every call to their cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

68. Plaintiffs and Class and Subclass members are also entitled to and seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to any cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the

Telephone Consumer Protection Act

47 U.S.C. §227(b)(1)(A)

69. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth in the preceding paragraphs.

70. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiffs and Class and Subclass members using an ATDS and/or artificial or prerecorded voice.

71. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), Plaintiffs and Class and Subclass members are entitled to treble damages of up to \$1,500.00, for each and every call to their cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. §

1 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

2 72. Plaintiffs and Class and Subclass members are also entitled to and
3 seek injunctive relief prohibiting Defendants and/or their affiliates, agents,
4 and/or other persons or entities acting on Defendants' behalf from violating the
5 TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency
6 purposes, to any cellular telephone numbers using an ATDS and/or artificial or
7 prerecorded voice in the future.

8 73. Plaintiffs and Class and Subclass members are also entitled to an
9 award of attorneys' fees and costs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members
12 of the Class, pray for judgment against Defendants as follows:

- 13 A. Certification of the proposed Class and Subclass;
- 14 B. Appointment of Plaintiffs as representatives of the Class and Subclass;
- 15 C. Appointment of the undersigned counsel as counsel for the Class and
16 Subclass;
- 17 D. A declaration that Defendants and/or their affiliates, agents, and/or
18 other related entities' actions complained of herein violate the TCPA;
- 19 E. An order enjoining Defendants and/or their affiliates, agents and/or
20 other related entities, as provided by law, from engaging in the unlawful conduct
21 set forth herein;
- 22 F. An award to Plaintiffs and the Class and Subclass of damages, as
23 allowed by law;
- 24 G. An award to Plaintiffs and the Class and Subclass of attorneys' fees
25 and costs, as allowed by law and/or equity;
- 26 H. Leave to amend this Complaint to conform to the evidence presented
27 at trial;
- 28 I. Prejudgment interest; and,

1 J. Orders granting such other and further relief as the Court deems
2 necessary, just, and proper.

3 **DEMAND FOR JURY**

4 Plaintiffs demand a trial by jury for all issues so triable.

5 RESPECTFULLY SUBMITTED AND DATED this 15th day of March,
6 2017.

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on March 15, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 15th day of March, 2017.

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